

REMARKS

Entry of the foregoing and reconsideration of the subject application are respectfully requested in light of the amendments above and the comments which follow.

As correctly noted in the Office Action Summary, Claims 1-22 were pending. By the present response, Claim 22 has been amended. Thus, upon entry of the present response, Claims 1-22 remain pending and await further consideration on the merits.

Support for the foregoing amendments can be found, for example, in at least the following locations in the original disclosure: the original claims, the specification, paragraph [0019] and [0048] and the original PCT specification, page 6, lines 29 and 30.

Entry of the foregoing is appropriate pursuant to 37 C.F.R. §1.116 for at least the following reasons. First, the amendments address the new grounds of rejection under 35 U.S.C. §112, second paragraph, thereby reducing the number of issues present upon appeal. Second, the amendments raise no new issues that would necessitate further search and/or substantive reexamination. Third, the amendments clearly overcome the grounds of rejection.

CLAIM REJECTIONS UNDER 35 U.S.C. §112

Claim 22 stands rejected under 35 U.S.C. §112, first and second paragraphs, on the grounds set forth in paragraph 3 and 5 of the Official Action.

Regarding Claim 22, Applicants note that paragraph [0019], as well as paragraph [0048], explain that "heat-sensitive plastics" can be used for the carrier

layer. One of ordinary skill reading the specification would understand that this material is used for the carrier layer because the carrier layer (including the barrier layer) is not exposed to such detrimental high temperatures before it is combined with the core layer. At the point when the carrier/barrier layer is subjected to such high temperatures, it is already combined with the core layer, which core layer will be able to absorb heat energy, i.e., the carrier layer is not as heat-sensitive when it is in combination with the core layer. Hence, in the invention, a plastic that is heat-sensitive to the "second temperature" can be used in the carrier layer because it is "protected" by the core layer when it is subjected to the "second temperature." To address the Examiner's concern, Claim 22 now recites that a plastic of which the carrier layer is formed is heat-sensitive to the second temperature. Therefore, reconsideration and withdrawal of the rejection is respectfully requested.

CLAIM REJECTIONS UNDER 35 U.S.C. §103

Each of the rejections presented in the Official Action relies upon, at least in part, the disclosure in U.S. Patent No. 6,368,686 B1 to Lofgren et al. (hereafter "*Lofgren et al.*"). However, all of the rejections should be withdrawn because the use of the *Lofgren et al.* reference in an obviousness-type rejection is improper. See 35 U.S.C. § 103(c).

The present application was filed in the USPTO on March 4, 2002, under 35 U.S.C. §371 and, under 35 U.S.C. §363, has an effective filing date in the U.S. Patent and Trademark Office that is the same as the international filing date, e.g., August 30, 2000. The *Lofgren et al.* reference issued on April 9, 2002, has a filing date of February 22, 1994, and claims the benefit of earlier filing dates back to December 28, 1989. Thus, the present application was filed prior to the issuance of

the *Lofgren et al.* reference. The *Lofgren et al.* reference is available as prior art in the United States under 35 U.S.C. §102(e).

However, use of this reference in any obviousness-based rejection of Applicants' present claims is improper, because it is commonly assigned to the assignee of the present application. See 35 U.S.C. §103(c) (stating that subject matter developed by another which qualifies as prior art only under one or more of subsections (e), (f), and (g) of §102, shall not preclude patentability). Per MPEP §706.02(I)(2), the *Lofgren et al.* patent can be removed as a reference by an affidavit or statement of common ownership at the time of the invention of the present application. Accordingly, Applicants provide the following statement:

U.S. Patent Application No. 10/070,167 and U.S. Patent No. 6,368,686 B1 were, at the time U.S. Patent Application No. 10/070,167 was made, commonly owned by or under an obligation of assignment to Tetra Laval Holdings & Finance S.A.

Since the *Lofgren et al.* patent is no longer available as prior art in an obviousness rejection against the application, Applicants respectfully request the withdrawal of the rejections. Accordingly, all pending claims are considered allowable.

Applicants additionally note that the *Lofgren et al.* patent was cited in the most recent rejections in response to Applicants' arguments submitted in the Response dated October 19, 2004. Thus, to the extent that the references and rejections in the present Official Action are common to the prior Official Action, Applicants incorporate by reference herein the arguments submitted in the Response dated October 19, 2004.

CONCLUSION

From the foregoing, further and favorable action in the form of a Notice of Allowance is earnestly solicited. Should the Examiner feel that any issues remain, it is requested that the undersigned be contacted so that any such issues may be adequately addressed and prosecution of the instant application expedited.

Respectfully submitted,

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